

DOCKETED

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

74 C 1030

Midway Manufacturing Company :
vs. :
The Magnavox Company : 74 Civ 1657 CBM
and : Deposition of Ralph
Sanders Associates, Inc. : H. Baer

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

The Magnavox Company, et al : Consolidated Actions
vs. : 74 C 1030
Bally Manufacturing : 74 C 2510
Corporation, et al : 75 C 3153
75 C 3933

Continued deposition of Ralph H.

Baer taken pursuant to subpoena and notice at the
office of Sanders Associates, Inc., Spit Brook Road,

FILED

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UNITED STATES DISTRICT COURT

ORIGINAL

South Nashua, New Hampshire, on Wednesday,
February 18, 1976, commencing at 10:15 o'clock in the
forenoon.

PRESENT:

For Midway Manufacturing Company
and Bally Manufacturing Corporation:

Donald L. Welsh, Esq.

For Sanders Associates and
Magnavox Company:

James T. Williams, Esq.

For Atari, Inc.:

Edward S. Wright, Esq.

For Sanders Associates:

Louis Etlinger, Esq., and
Richard I. Seligman, Esq.

Stenotype Reporter:

Barry G. Nolin, C.S.R.

I N D E X

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RALPH H. BAER

called as a witness in behalf of Midway Manufacturing Company and Bally Manufacturing Corporation, being first duly sworn, was examined and testified further as follows:

(Interrogatories by Mr. Welsh)

1 Q. Referring to Exhibit 37-1, 2 and 3, would you do the same thing with this exhibit that you did with respect to Exhibit 26, Mr. Baer?

A. Yes.

MR. WILLIAMS: I assume you mean read it --

2 Q. (By Mr. Welsh.) Yes, read into the record your entries but, also, indicate what the printed legends are.

A. Well, 37-1, 2 and 3 are patent disclosure sheets of the standard Sanders format of that time, that is, 1968. This one is executed in pencil. Under "descriptive title," my entry is: "Method for local editing of R.F.-T.V. transmissions." The "problem solved," in my handwriting, is: "To modify standard T.V. receiver displaying the modulation of an R.F. transmission without 'entering' the T.V. set." Under "how it is solved," in my handwriting, "R.F. applied to

the T.V. set from an antenna, etc., is modulated from a local external source by placing variable attenuator before the antenna terminals and modulating this attenuator. Means for extracting horizontal and vertical sync are also provided." Next, under Item 4, my entry is as follows: "Need to superimpose video information on standard T.V. set without necessitating connections to the interior circuitry and to extract sync signals." Under Item 6, which calls for an entry on who constructed the apparatus, there is the entry "William Harrison, and tested by William Harrison and R. H. Baer." Further entry, "Is commercial use contemplated?" My answer: "Yes," "Explain," my entry: "In conjunction with gaming, simulation, training, using cooperative T.V. station transmission such as CATV." Do you want me to read the rest of the self-explanatory --

3 Q. I think on that --

A. -- entries?

4 Q. -- page they are legible. Could you go on to the next page?

A. The next page is, under "Descriptive title" is a repetition in my handwriting, "Method for local

editing of R.F.-T.V. transmissions." "Old method apparatus," my answer is "None." Under "Disadvantages of old apparatus or method" I entered the following: "Entering a T.V. signal into a standard receiver requires placing video information on a carrier. When an external transmitted carrier is already being received this becomes impossible, since non-synchronism produces objectionable beat signals." Under "Advantages of new apparatus" I entered the following: "Crowbar or antenna input attenuator control described allows video and color (chroma) modulation of a T.V. set receiving a standard signal without need to connect to its internal circuitry. This allows T.V. receiver attachments to be made in private home sets without need for trained technician." And the "Features believed to be new" I entered "Crowbar modulation and sync extraction also achieved without internal set connections." That's the end of the entries on that page, and page 37-3 is blank.

5

Q. Now, was the method described here incorporated into the application for your 480 patent?

A. Yes, I believe so.

6 Q. Here again, there is only reference to a standard T.V. receiver and not to a Raster scan T.V. type display?

A. That's right.

7 Q. Mr. Baer, are you familiar with the 284 patent and the reissue patent No. 28507 which is a reissue of the 284 patent?

A. Yes.

(Document handed to the witness by Mr. Welsh.)

8 Q. (By Mr. Welsh.) Do you consider that the apparatus disclosed in that patent constituted an improvement in the T.V. gaming art when compared with the apparatus of your 480 patent?

A. In my opinion, yes.

9 Q. And of what did that improvement consist?

MR. WILLIAMS: I object to the question using the phrase "that improvement." There are, again, a number of different apparatuses disclosed in both the 284 patent and the 480 patents, and the question is, therefore, vague, definitely.

10 Q. (By Mr. Welsh.) You stated that you consider that the apparatus here did constitute an improvement in the T.V. gaming art, did you not?

A. That's right.

11 Q. Would you tell us what that improvement was?

A. Well, I think Mr. Williams characterized the answer that I would have to give. There are many different improvements shown in 284 which extend the capabilities of the invention shown in 507 or its predecessor.

12 Q. Was there one improvement which was considered to be -- which you considered to be of greater scope than others?

MR. WILLIAMS: I object to the question because of the use of the term "greater scope." I don't understand what that phrase means in the context of the question. I think the question is vague.

13 Q. (By Mr. Welsh.) Do you understand the question?

A. Would you try to elaborate on it?

14 Q. Was any one of the many different improvements more important, in your view, than others?

MR. WILLIAMS: I also object to the question because it is not fixed to the time as to whether you are talking about the present or at the time of the development of the apparatus of 284 or at the time of the filing date of 284 or just what

time you are referring to.

THE WITNESS: If you are referring to my recollection of what I might have thought at the time Rusch filed for these patents, was one more outstanding innovations, I think I can answer that.

15 Q. (By Mr. Welsh.) Would you do so, please?

A. I think, among many other things, the introduction of what we've come to characterize as ball games, hitting spots as the word is defined, was the most of one or more important contributions.

16 Q. What other contributions do you recall as of the time of filing?

A. Well, Mr. Welsh, I find that very difficult to answer, because there are so many different features described in the various patents that at this late date, unless I read them, I find them very difficult to keep apart as far as where and who did what at the time. It is impractical.

17 Q. Now, you have recalled one of the improvements or contributions, as you referred to it. Do you recall, now, any others? If you wish to refer to the patent, that's fine.

A. If I do that, I'll be reinterpreting what I remember,

what I considered to be different or new back in '68 or '69, whatever the case may be, in the light of what I read now, and I don't know what that can prove.

18 Q. Well, then, without referring to the patent, do you recall any other improvements than the introduction of ball games?

A. Yes, certainly. All those concepts and circuit configurations that grew from them that have to do with ball motion, which is a function of the manner in which the ball is hit by hitting spots, that is, all those details which deal with the ball's response as a function of the derivative of the hitting motion at the time of the impact.

19 Q. Are you speaking about the differentiating and integrating circuits that you discussed earlier?

A. Yes, the gater differentiator which is described as gater differentiator and subsequent integration of the output of the gater differentiator.

20 Q. Do you recall any other improvements?

A. I am not certain, now, but I think the concept of four wall bounce, that is, multiple wall bounce such as that necessary for an effective hockey game, for example.

- 21 Q. Do you recall any others?
- A. Yes, Rusch also made some contributions to detailed circuit improvements in the horizontal and vertical sync oscillator circuits.
- 22 Q. Any others?
- A. If my recollection serves me correctly, the creation and concept of the whole series of different action games such as ping pong, hockey were a major contribution.
- 23 Q. Is that concept related to the earlier statement of improvement of the introduction of ball games?
- A. Yes.
- 24 Q. More or less the same thing, is it not?
- A. Yes.
- 25 Q. And is that concept due to the introduction of the bounce feature?
- A. By bounce you mean a symbol that's capable of rebounding from other symbols? I suppose the answer would be yes.
- 26 Q. Could the major improvement be characterized very simply as introduction of the bounce feature to the TV game concepts?
- A. Well, that's a pretty fair characterization.

27 Q. Just pretty fair or --

A. Well, it's a little hard to associate in my mind the bounce feature with the games which they intended to accomplish, which is intended to be accomplished, through the use of that feature, so it is a little like putting the cart before the horse. The concept of a game has to come first before one needs a bounce feature.

28 Q. Do you credit Mr. Rusch with having conceived the ping pong type game where one image appears to bounce off another?

A. To the best of my recollection, that's how it was.

29 Q. Now, you mentioned the multiple wall bounce necessary for a hockey game, for example. Do you also credit Mr. Rusch with conceiving that feature?

A. I believe so.

30 Q. Would you describe what you meant by multiple wall bounce?

A. Yes, by multiple wall bounce I mean the provision for these two barriers, either in a vertical plane or in the horizontal plane, which are capable of reflecting the ball upon intercept between the ball and the wall symbol.

31 Q. Now, you just used the phrase wall symbol. Earlier did you refer to bouncing off of the edges of the screen?

A. No, I didn't.

MR. WILLIAMS: The testimony will speak for itself.

MR. WELSH: I didn't recall, so I was asking him.

32 Q. (By Mr. Welsh.) Do I understand correctly, then, that you also credit Mr. Rusch with conceiving the idea of providing wall symbols with a ball image rebounding off of such wall symbols?

MR. WILLIAMS: Well, again, Mr. Baer, this should only be as to your present recollection.

THE WITNESS: Well, that's all it can be. As I said earlier, yes, I think that's true.

33 Q. (By Mr. Welsh.) At least, you don't credit yourself with that?

A. I don't think so.

34 Q. Is the same thing true with respect to a ball rebounding, a ball image, rebounding off of a player image as distinguished from a wall image?

MR. WILLIAMS: Is what the same thing?

MR. WELSH: You can read the previous question.

(The last question was read back by the reporter.)

THE WITNESS: The question was whether a ball image rebounding from a player image was conceived by Mr. Rusch or, in my opinion, or to the best of my recollection, and I believe the answer has to be yes.

35 Q. (By Mr. Welsh.) Would you elaborate? I'm not sure the record is clear. Yes, Mr. Rusch conceived --

A. Yes, Mr. Rusch conceived bounce feature of two images, two symbols becoming located on the screen.

I'd like to make sure that it is understood that represents my present recollection.

36 Q. And is that with respect to both the bounce of the ball image off of a player image and the bounce of the ball image off of a wall image?

A. Yes.

37 Q. And you did not conceive either of those bounce features?

A. I don't think so.

38 Q. Did Mr. Harrison conceive either of the bounce features?

A. Well, with the same difficulty, I don't recollect. Again, I would have to go through the documents, and I thought we agreed that wasn't the purpose of these questions.

39 Q. Comparing the apparatus of the reissued patent 28507 with the apparatus of your 480 patent, do you presently consider it to have the same improvements as those which you listed?

MR. WILLIAMS: I object to the question. I don't know what improvements you are referring to as those which he listed.

40 Q. (By Mr. Welsh.) In response to my questions.

MR. WILLIAMS: Could you repeat the question again, please?

(The last question was read back by the reporter.)

MR. WILLIAMS: Well, I object to the question. You are again asking him a very -- a question which calls for a detailed analysis of the 284 and 480 patents, and it doesn't seem that there

should be any reason for him to make that kind of analysis from memory. The patents speak for themselves.

MR. WELSH: Well, I am trying to determine what he considers to have been the improvements and what he now considers to be the improvements of the apparatus of the 284 and the reissue 28507 patents with respect to the apparatus of the 480 patent. Now, as I understand it, both the apparatus of the 480 and the reissue 28507 were incorporated into working models which were demonstrated, and I'm not asking him to state what the patents referred to as improvements, but what he considers to be the improvements of the apparatus.

MR. WILLIAMS: But you are referring to the apparatus as disclosed in the patents, not the apparatus that was actually constructed and demonstrated.

THE WITNESS: I can only say I have great difficulty answering that question. In the first place, neither 284 nor 28507 are my patents. They're Rusch's patents. In the second place, my recollection is that 507 is very similar in most details to 284, so I don't see where you can ask that

question and expect me to answer it.

41 Q. (By Mr. Welsh.) Well, I believe they're exactly the same, but it is the comparison of the 507 apparatus with the 480 apparatus.

A. I may have looked at those patents a hundred times, but I can't respond to the question, because at the moment I simply don't recollect which it is that 480 covers.

42 Q. You did testify, I believe, with respect to apparatus, specific apparatus, that was constructed, and I believe you also stated it was constructed as described in the 480 patent and the 284. Specifically, do you recall which model incorporated the apparatus of the 480?

A. I believe that yesterday we tried to relate 480 to the hardware in Exhibit 34 and, also, in parts of Exhibit 35, and I believe portions of 284 were also related to Exhibit 35.

43 Q. You consider that Exhibit 35 embodies the apparatus of the 480, which is your patent?

A. Yes.

MR. WILLIAMS: Well, again, there's a number of apparatus in the 480 patent, some of which

may or may not be in a particular piece of hardware.

44 Q. (By Mr. Welsh.) Does Exhibit 35 not embody the digital circuitry of the 285 patents?

A. Again, you are straining my recollection with respect to the patent numbers and what's in them.

45 Q. There's the 285 patent.

(Document handed to the witness by Mr. Welsh.)

THE WITNESS: Well, we went through that yesterday, and the answer is yes.

46 Q. (By Mr. Welsh.) And that Exhibit 35 was demonstrated to R.C.A. among others?

A. Yes.

47 Q. Now, there was also a demonstration in January of 1968 to Teleprompter?

A. That's correct.

48 Q. And could you identify which exhibit number represents or which exhibit represents that apparatus?

MR. WILLIAMS: That question's been asked and answered.

49 Q. (By Mr. Welsh.) Just so the record at this portion is clear.

A. All right. I'll try. I believe the equipment

demonstrated to Teleprompter was that which we labeled Exhibit 30.

50 Q. And that was chassis No. 4?

A. Yes.

51 Q. And you also constructed at an earlier time a breadboard of your original image generating circuitry, did you not?

A. Yes, I did.

52 Q. Would you identify that and tell us what exhibit number that is?

MR. WILLIAMS: Well, again, I object. This question has been asked and answered. We've gone through these exhibits for some eleven days now in great detail. It doesn't seem necessary to repeat prior testimony.

53 Q. (By Mr. Welsh.) Was it Exhibit 29?

(Exhibit handed to the witness by Mr. Welsh.)

THE WITNESS: I don't believe so, Mr. Welsh. I think it was an earlier one.

54 Q. (By Mr. Welsh.) Exhibit 24, which bears the number, breadboard No. 1?

A. Exhibit 24 was the original breadboard which, I believe,

you asked what earlier one going backwards in time from the one we identified a minute ago; I think the predecessor was Exhibit 28, the unit that was shown to management people including their Mr. Etlinger and Mr. Campman.

55 Q. Comparing Exhibit 30 to Exhibit 28 and the operation of the two, do you consider the apparatus of Exhibit 30 to possess improvements over the apparatus of Exhibit 28?

A. Yes.

56 Q. What are those improvements?

A. They include, particularly, the ability to play active ball games in the case of Exhibit 30, which was not possible with Exhibit 28.

57 Q. Is that, again, the result of the addition of the bounce feature?

A. Yes.

58 Q. Do you consider Exhibit 30 apparatus to be an improvement over that of Exhibit 28 in any other respects?

MR. WILLIAMS: Well, again, I object to the question. We've had extensive testimony about what Exhibits 30 and Exhibit 28 are and what they include, and I don't see any reason for

subjecting the witness to a memory test of what is in those exhibits and how they are related to each other. The witness has already given, as I said, extensive testimony as to what are in those various exhibits.

MR. WELSH: Yes, but he has not testified with respect to what he considered to be improvements, if any, of the apparatus in one exhibit over another.

He has described what is in each exhibit. I agree with that, but he had not stated what he considers to be the improvements over the others.

MR. WILLIAMS: I understand that, but you are now asking him to make a comparison which requires a recall of the details of what is in each of those exhibits, and I don't think it is fair to ask the witness to recall his testimony which started last November, I believe it was, with respect to all of these exhibits, especially in the detail required to make a comparison between two particular ones.

THE WITNESS: I agree that what you are asking me to do is to recall earlier testimony.

I did make such a comparison. I could sit here and, probably, come up with one or two additional items beyond the ball game, but I am not really proving anything except that I can recall what transpired here and what we discovered by going through the documentation laboriously over the last ten or twelve sessions.

59 Q. (By Mr. Welsh.) At least you do remember the ball game feature?

A. Certainly. It is an outstanding feature.

60 Q. Are you familiar with the 285 patent which reissued as No. 28598?

A. Yes.

61 Q. How does the apparatus of that patent differ from the apparatus in the 507 patent?

A. Well --

MR. WILLIAMS: Again, I object.

You are asking for a detailed comparison of the apparatus of two different patents each of which shows a number of different circuits and particular pieces of apparatus, and you are asking the witness to state his recollection and effectively putting him to a test of his memory which, really, has no relevance to this action at all.

THE WITNESS: I quite agree. I think this is completely unfair to expect me to relate the details in many patents before us without reference to them and to state differences or similarities from memory. I simply cannot do that.

62 Q. (By Mr. Welsh.) Do you consider that the apparatus which resulted in the reissue patent 28598 to have contained any improvements over the apparatus of reissued patent 507?

MR. WILLIAMS: Again, I have to note that there are many different apparatus in both of those patents, and the question is therefore vague and indefinite.

63 Q. (By Mr. Welsh.) You are named as an inventor, are you not, of the 28598 reissue patent?

A. That's correct.

64 Q. Do you know what you invented?

A. Whatever it says in the patent.

65 Q. You don't know, yourself?

A. Mr. Welsh, those patents are based on inventions made, in some cases, close to a decade ago. When we wrote -- by we I mean the individuals concerned here, myself, Rusch, Harrison -- wrote internal

pieces of paper to the patent office disclosing facets of these games which, eventually, wound up in figures and, eventually, resulted in issued patents, we did that in good faith, based upon the intimate knowledge of who struck John in those days. It is ridiculous to ask me at this date to recall, specifically, who did what, and I'm not going to do it.

66 Q. You do not know, I take it?

A. I simply cannot be expected to recall that detail. You'd have to rely on the records which we went through in great detail and the integrity of the people involved.

67 Q. Going through the records did not refresh your recollection?

A. The elements of the record which you asked me to recollect a few minutes ago refer to testimony which we went through two months ago. I can't possibly recall all the details to answer your question definitely two months later. It is not practical. It is not fair.

68 Q. I believe the present question is directed to a development which we discussed just last week and as recently as yesterday.

- A. If that's the case, I do not understand your question.
- 69 Q. Do you recall Exhibit 35 which we discussed yesterday and the characteristics of games playable with that?
- A. Yes, sir.
- 70 Q. Do you recall Exhibit 30, which was used in the demonstration to Teleprompter and the games which were possible with that?
- A. Yes, sir.
- 71 Q. Comparing, then, Exhibit 35 with Exhibit 30, do you consider the apparatus of Exhibit 35 to constitute an improvement over the other apparatus of Exhibit 30?
- A. I think you asked that question before, Mr. Welsh.
- The answer is yes.
- 72 Q. I believe before we were discussing Exhibit 30 with respect to Exhibit 28 and this, now, is Exhibit 35 with respect to Exhibit 30.
- A. Reconsidering the question --
- 73 Q. In other words, the apparatus demonstrated to R.C.A. as compared to the apparatus demonstrated to Teleprompter?
- A. The answer is still yes.
- 74 Q. In what respects is the apparatus in 35 an improvement

over that of Exhibit 30?

A. Going strictly on recollection, again, I believe that there are additional games playable with the apparatus of Exhibit 35 vis-a-vis those of the apparatus of Exhibit 30.

75

Q. And what additional games?

A. Well, handball game, I believe.

MR. WILLIAMS: Again, we've gone through what you can play on both those exhibits, and the record will be fairly clear as to what you can play on ~~one~~ and what you can't play on the other.

MR. WELSH: The record does not show what Mr. Baer, himself, considered to be an improvement of Exhibit 35 with respect to Exhibit 30.

MR. WILLIAMS: The last question you asked concerning specific games, which can be played on one and ~~not~~ on the other.

MR. WELSH: That's just amplifying what he thinks is the improvement.

MR. WILLIAMS: My statement still stands. I think the record will show which games can be played on one and not on the other.

THE WITNESS: Well, I agree with that

assessment. We spent days going through detailed paper work showing how we progressed on the bench from one piece of hardware to the next. Certainly, how could you have any more detailed expedition of improvements than that.

76

Q. (By Mr. Welsh.) There is a detailed exposition of differences, perhaps, but not an exposition of what differences you considered to be improvements.

MR. WILLIAMS: I'm afraid the only way to get at what you are doing, then, is to go back and go through that disposition of differences again and find out whether each one is an improvement. I don't think it is proper to have that witness repeat all that prior testimony.

MR. WELSH: I am not suggesting, Mr. Williams, that that be done. I asked the witness if he recalled this apparatus and testifying with respect to it, that is, Exhibit 35, yesterday and Exhibit 30 last week, which was with respect to the Teleprompter demonstration. Perhaps he doesn't recall any other improvements of Exhibit 35 with respect to Exhibit 30, but he said he did recall the games that were demonstrated with the apparatus. If he

considers certain games playable with the later apparatus, Exhibit 35, to be an improvement, if he remembers, I think it is appropriate for him to testify with respect to them. If he doesn't remember, then he doesn't remember.

THE WITNESS: Well, I believe I mentioned handball as being a feature of 35 not available in 30. Volleyball, I believe, is another one. The golf game, putting game, which was playable with an attachment to Exhibit 35 did not exist in Exhibit 30. At the moment, that's the limit of the improvements I can recall.

77 Q. (By Mr. Welsh.) So the only improvements that you recall, comparing Exhibit 35 to Exhibit 30, involve the capability of playing additional games, including handball, volleyball, and the golf game?

MR. WILLIAMS: He just stated his testimony.

THE WITNESS: To the best of my recollection at the moment.

78 Q. (By Mr. Welsh.) And you do not recall what you contributed -- strike that.

Did you have anything,

specifically, to do with the development of the portions of Exhibit 35 which made it possible to play these additional games?

A. I can only answer that by repeating my earlier testimony that we were a close-knit group of three people. I was in frequent touch with the day by day activity on the bench, and, certainly, we all contributed to the various facets of the many pieces of hardware we created and the concepts that made it possible.

79 Q. Was the feature that made it possible to play handball and volleyball with Exhibit 35 the capability of a ball image bounding off a wall image?

A. I'm sorry. I really lost the meaning of that question. Would you please repeat it?

(The last question was read back by the reporter.)

THE WITNESS: No. Not necessarily.

80 Q. (By Mr. Welsh.) Was it the same thing for both games?

A. No.

81 Q. Was the feature which made it possible to play handball using Exhibit 35 the feature of the ball bouncing off a wall?

A. Yes.

82 Q. What feature made it possible to play volleyball with Exhibit 35?

A. The presentation of a side view of a net symbol.

83 Q. Did you have anything to do with conceiving the use of the side view of a net symbol so you could play volleyball?

A. I really don't recollect. You'd have to go back through the records to establish that.

MR. WELSH: Let's take a break.

(Whereupon, at 11:20 o'clock,
A. M., a short recess was taken.)

AFTER RECESS 11:25 A.M.

84 Q. (By Mr. Welsh.) You are one of the inventors of re-issue patent No. 28598, Exhibit 15, are you not?

A. That's right.

85 Q. Do you understand why the application for reissue of the 3659285 patent -- could I have what I just said read back?

(The last question was read back

by the reporter.)

86 Q. (By Mr. Welsh.) -- was filed?

MR. WILLIAMS: You said --

MR. SELIGMAN: The number is wrong.

87 Q. (By Mr. Welsh.) That question, again, do you understand why the application for this reissue patent 28598 was filed?

A. Well, I have a general recollection of why it was done at the time.

88 Q. What is that recollection?

A. That recollection is that the original patent in some specific instances did not convey a clear enough picture of what we had in mind when we invented the apparatus described in that patent.

89 Q. How did you find out that the original patent did not convey a clear enough picture of what you had in mind when you invented the apparatus described in the patent?

A. Well, Mr. Welsh, I believe I have already testified to the fact that I attended one or several meetings in which the subject of certain definitions of items in that patent were discussed and questions were raised whether there were, in my opinion, better

ways to define that which we invented some years prior than the words in the patents indicated.

90 Q. Did it occur to you, personally, prior to those meetings that the original patent did not convey a clear enough picture of what you had in mind at the time of your invention?

MR. WILLIAMS: Again, Mr. Baer, only if you recall.

THE WITNESS: I don't recall, specifically.

91 Q. (By Mr. Welsh.) Do you think there's a possibility it did occur to you?

A. Yes.

92 Q. Did you discuss it with either Mr. Rusch or Mr. Harrison prior to the meetings that you refer to?

A. I don't recall. I may have.

93 Q. Have you ever read the original patent 3659285?

A. Certainly.

94 Q. How many times have you read it?

A. In the course of seven or eight years probably quite a few times.

95 Q. Roughly how many?

A. I couldn't begin to guess.

96 Q. A rough approximation?

MR. WILLIAMS: Well, he's already testified that he can't make a guess.

96a Q. (By Mr. Welsh.) You have no idea at all?

A. That's not a book. You don't read it from cover to cover. I certainly looked at parts of it quite often.

97 Q. What's the occasion of your doing that?

A. Well, as the record shows, there was continuing activity on the general T.V. game program for quite a few years, and after the association with Magnavox and during that negotiation, I certainly had occasion to look at the patents.

98 Q. Now, the original patent issued on April 25, 1972; the Magnavox negotiations were prior to that time, were they not?

A. They were in '71, I believe.

99 Q. So you couldn't have read the patent before that date?

A. That's correct.

100 Q. Did you read the application for the original patent?

A. Certainly.

101 Q. And that was at the time the application was filed, and you signed the papers in connection with the application?

- 102 A. Yes, yes.
- Q. Did you discuss the application with anyone at that time?
- A. Well, certainly, I must have discussed the application with those individuals here at Sanders who were charged with its preparation.
- 103 Q. Do you recall, specifically, doing that?
- A. Again, Mr. Welsh, we're talking about a number of patents which were not necessarily all handled by the same individuals here at Sanders, and I couldn't recall that, either. So I don't know, specifically, who I talked with. Certainly, I talked with Mr. Seligman repeatedly, because he prepared many of the applications. I talked with Mr. Etlinger, maybe others. I don't recall.
- 104 Q. You have been an inventor in more than one patent, have you not?
- A. Do you mean more than one patent in relation to T.V. games or in general?
- 105 Q. In general.
- A. Yes.
- 106 Q. Do you follow any procedure when you sign the papers or when you sign the papers for the different

applications for the patents?

A. Procedure is outlined by either company policy or by whatever federal law it is that determines what the company policy must be in the first place.

107 Q. With respect to the original application for patent 3659285 here, did you discuss the application with the attorney who prepared it with respect to terminology used or accuracy of description?

MR. WILLIAMS: I object to the question as to the details that were in discussions that Mr. Baer might have had with the attorney who prepared the application because it is calling for information which is protected by the attorney-client privilege, and I caution Mr. Baer that he should not answer any questions which would contain information protected by that privilege.

THE WITNESS: I would like to respond, Mr. Williams, by saying that whenever a disclosure is made of the type we read from this morning on company formats, it frequently results in exchange of conversation between some individual in the patent office and the inventor at a minimum

so as to clarify what few words in a limited space on these disclosure forms really intend to describe. Beyond that, if through one process or another it's been decided to go forward with an application, certainly, it is routinely additional contact between the inventor and the patent attorney so as to prepare a meaningful application that represents what the inventor thinks is invented.

108 Q. (By Mr. Welsh.) Is that a common procedure that you have followed with respect to patent applications in which you've been named as an inventor?

A. Yes, it is company policy.

109 Q. And did you do that in connection with the application for original patent 3659285?

A. Yes.

110 Q. Do you recall whether any corrections were made in that application in response to any suggestion of yours?

A. What do you mean by corrections, Mr. Welsh?

111 Q. Changes after you first received the application and read it and discussed it with the attorney.

A. I don't believe there's a simple yes or no answer for that question.

112 Q. Do you recall whether -- strike that.

You say there's no simple yes or no answer. Is there any answer to the question?

A. Well, in real life in any such situation I would think there are always problems relating to the understanding of the attorney or what was really intended, several go-arounds to clarify it, or if you want to equate the clarification of questions on the part of the attorney as corrections, yes, there were corrections made.

113 Q. With respect to the application for the original patent 3659285, did you examine that alone or with Mr. Baer -- I mean Mr. Rusch and Mr. Harrison also present?

A. I'd have to guess at what happened. I am certain each one of us, individually, read the drafts for the application, probably, at various stages during their generation, and I can only guess that we must have had many discussions between us on the subject. It is only natural.

114 Q. At the time of the filing of the application when you read it, did it accurately describe what you then thought to be the invention?

- 115 A. Certainly.
- Q. Do you recall at that time whether you questioned any of the terminology that was used?
- A. I can't recall that now, Mr. Welsh.

MR. WELSH: Off the record.

(Discussion off the record.)

- 116 Q. (By Mr. Welsh.) O. K. Mr. Baer, in a file marked 2837 stamped "work copy" on the outside which has been produced by Mr. Seligman as work copy file corresponding to the application for original patent No. 3659285, there appear to be two copies of a draft of patent application with interlineations. I ask you now to examine these interlineations and advise me if any of them were placed there by you? I'll hand you, first, this copy.

(Document handed to the witness by Mr. Welsh.)

THE WITNESS: Just looking at the first few pages, the answer is yes, some of the form lineations were placed there by myself.

MR. WELSH: Mr. Seligman, may we mark that draft as an exhibit, please.

MR. SELIGMAN: Yes.

(Whereupon, the document above-referred to was marked Sanders' Exhibit No. 38 for Identification.)

MR. WELSH: There are also two copies of a letter or memo with your signature, Mr. Seligman. I wonder if we might mark those? I'll ask the reporter to mark this as 39.

(Whereupon, the document above-referred to was marked Sanders' Exhibit No. 39 for Identification.)

117 Q. (By Mr. Welsh.) Mr. Baer, there are other copies here with interlineations, also. Would you please go through these and advise me if any of them is in your handwriting?

(Documents handed to the witness by Mr. Welsh.)

THE WITNESS: Mr. Welsh, I'm not sure which of these documents you want me to look at. There's a whole series here. Where does the new material start, or do you want me to go through the whole stack?

MR. WELSH: Off the record.

(Discussion off the record.)

THE WITNESS: O. K. I'm all done.

118 Q. (By Mr. Welsh.) Did you find any other documents in

there with notations in your handwriting other than Exhibit 38 which we've already marked?

A. No, I did not.

MR. WELSH: Let's break for lunch.

THE WITNESS: One other observation.

Maybe you'd like to defer that until after the break. Before, having had the opportunity to go through 285, now, in conjunction with looking for entries in my handwriting, I believe I made a mistake in testifying earlier here within the last hour or so as to who gets the credit for the original thoughts on the bouncing ball in the first place, and I guess some of the derivative names such as tennis, handball, and some of the others which, I believe, if I recollect correctly, I ascribed to Rusch about an hour ago here. That's manifestly wrong if that's what I did. I am happy to see that I'm also inventor of those details.

119 Q. (By Mr. Welsh.) What did you see that caused you to wish to correct your testimony?

A. Well, looking at 285, clearly, three of us, that is, Harrison, Rusch, and myself were co-inventors with respect to the ball action details I just described,

and I think I characterized the origin incorrectly this morning.

120 Q. Now, after reviewing the file of the 285 patent, do I understand correctly that it is your testimony that the bouncing ball feature was one of co-invention of all three of you; you, Mr. Rusch, and Mr. Harrison?

MR. WILLIAMS: I would comment that he's not thoroughly reviewed that thing. He's glanced through it for a specific purpose.

THE WITNESS: And I agree. If I can, I'd like to have the opportunity of looking at this material more closely, because, as I said, having looked through it hurriedly for another purpose I seem to have discovered an error in my testimony this morning I want to bring to your attention, but I certainly didn't have a chance to look in the material in sufficient depth to make sure just what my ground is.

121 Q. (By Mr. Welsh.) Now, when you say credit for the original thoughts of the bouncing ball, did you mean bouncing of the ball image off of a player image?

A. Yes.

122 Q. And did you also mean the bouncing of a ball image
off of a wall image?

A. Yes.

123 Q. So that now you feel that the correct, in fact,
situation is that all three of you thought of the
bouncing feature with respect to both bouncing of
of the player image and bouncing off of the wall image?

MR. WILLIAMS: I object to the
question as a characterization of his testimony. He
said that reviewing the file he had occasion to reassess
part of his testimony, but that he would like to have
an opportunity to go through other papers to determine
what he thinks the facts to be. He did not say that he
presently has a firm conviction of what those facts
are.

MR. WELSH: I don't think I used
the term firm conviction, Mr. Williams.

MR. WILLIAMS: Well, he did not
give testimony as you characterize it in your last
question.

MR. WELSH: Could you read that
question please?

(The last question was read back

by the reporter.)

MR. WILLIAMS: And my objection still stands. He said he did not have that feeling, as I understand.

124 Q. (By Mr. Welsh.) Is that a correct statement, Mr. Baer, as the facts now appear to you?

A. Perhaps, yes, but I would like to repeat that I would like to have the opportunity of looking at, especially, 284 and 285 on some other date to refresh my memory, because, obviously, I was mixed up on that point earlier today, and it's only a cursory examination of 285 in connection with going through this folder that alerted me to the fact there was something wrong with my testimony this morning.

125 Q. Did you reach that conclusion because you saw a bounce feature in the 285 application papers, and that is in the name of all three of you as inventors?

A. Well, certainly, that's what's causing me to reassess my statement of this morning which, to the best of my recollection, I believe, indicated otherwise.

MR. WELSH: Well, let's break for lunch.

(Whereupon, at 12:15 o'clock, P. M., a recess for lunch was taken.)

AFTERNOON SESSION 1:30 P.M.

- 126 Q. (By Mr. Welsh.) Mr. Baer, I hand you what has been marked as Exhibit 38, which you indicated contained some notes made by you. I also hand you Exhibit 39 and ask if you could identify that?
- (Documents handed to the witness by Mr. Welsh.)
- THE WITNESS: Yes, Exhibit 39 is a carbon copy of a memo addressed to Bill Rusch, Harrison, and myself from Mr. Seligman with reference to Docket No. 2837 in which we're asked to review the draft copy of the patent application and asked to make changes by writing changes directly onto the draft.
- 127 Q. (By Mr. Welsh.) Do you recall receiving a copy of that memo?
- A. No, I don't recall.
- 128 Q. That memo does set forth, however, the procedure that you indicated you had followed with other applications, is that correct?
- A. Yes, sir.
- 129 Q. Would you identify Exhibit 38?
- A. 38 is a Xerox copy of a draft for patent application

Docket No. 2837.

130 Q. Do you recognize that as a draft of the application for your patent No. 3659285?

A. Well, I would have an easier time recognizing it if I had the figures that went with the 2837.

131 Q. Are they in that file?

A. I don't know.

132 Q. Would you look?

A. The figures are represented in the file several times over. Using the figures as an aid, it appears that is the draft from the 285 patent application.

133 Q. Now, you indicated earlier, I believe, that Exhibit 38 contains some notations made by you?

A. Yes, I did.

134 Q. Would you point out where those notations are located?

A. All right. The first one appears on page 6 at the end of the paragraph starting with the word figures 8A-8C.

135 Q. And what's the notation that you placed there?

A. It's hard to read, because it's been crossed out and then, evidently, reinstated with the word "O. K." I believe it says figure 8C are schematic control used

to produce hit generator voltages for the primary flip flop shown in figure 9. The next appearance of a correction is on page 8 -- page 9, I'm sorry. There's a discrepancy here. This page is labeled page 9 in the upper right-hand corner by hand and under it on the left-hand margin in typing it says page 8, so it is the handwritten page 9 in the center of the page. I crossed out a word "shielded" in front of the word "shielded cable," and somewhere further downstream I entered the words "or unshielded with respect to the use of twin lead." Do you want me to go on?

136

Q. Yes, please.

A. On handwritten page 10, the third line after the words "Dot will disappear and --" I put a slash mark and the word "or" into the text, and then two lines below behind the words "Served slash reset switch" I corrected the word switch to the word switches by adding and E and an S.

137

Q. With what type of an instrument were those entries placed there?

A. Red pencil.

138

Q. And was the same thing true of the other entries that you indicated as being yours?

- A. No, the first one I indicated as being mine was in standard black pencil and was crossed out subsequently with red pencil and then, I think, annotated again with the word "O. K." in red pencil.
- 139 Q. I think your next page is page 9 was where you indicated there was an entry?
- A. Yes, we already read that into the record.
- 140 Q. Yes, but I was asking what type of instrument was used?
- A. Red pencil, and the same thing applies to page 10.
- 141 Q. Now, there appears some red pencil marking on a page that has a handwritten No. 8 on it.
- A. Well, that might have been mine. It's undecipherable. It is a squiggle that crosses out a word.
- The next entry in my handwriting in red pencil is on page 17, handwritten 17. A sentence was added below the lead paragraph. Do you want me to read what the sentence is?
- 142 Q. Yes.
- A. The sentence is: "Control 54 may be manipulated by means of a knob or may be part of a mechanism such as a joy stick," and there is another correction in the first line of the last paragraph on the same page

which I can't decipher, because it seems to be -- it seems as though I merely added a red line emphasis to make sure that the letters as I read them really were what I thought they were. There's the word herein that looks like hereinother that was meant to be hereinafter, and I emphasized the real meaning by putting red pencil marks, and I corrected the word "English" in "English control" to start with a capital letter.

143 Q. Was that correction made to some other interlineation?

A. Yes, it was made to an interlineation made, I believe, by Mr. Seligman.

144 Q. There's other interlineations on the pages you've covered so far, are there not?

A. Yes. I think they are all Mr. Seligman's, but I'm not sure. On page 20 is the next appearance of an interlineation in my handwriting, again, in red pencil. In the seventh line of the second paragraph after the words "Hit dot from an off-screen --" I interject the words "position on one side of the screen" and cross out the word "left," and then on the next line I go on and say "An off-screen --" cross out the word "right position" and interject "on the

other side of the screen each time the flip flop --" etc. The next occurrence of an interlineation is on page 22 about half-way down the page where behind the word "output from the wall dot generator" I inject "or line." I don't know. I think the next word was meant for -- or there is just an O there followed by the word "bar generator." The next occurrence is on page handwritten 24 with an additional sentence behind the -- following the end of the second paragraph. The sentence says, "The horizontal position of paddles A and B are similarly controlled by controls and knobs to supply voltages E1 and E2." On the bottom of page 31 is an entry which by reference is meant to be interjected between two sentences in the middle of the first paragraph after the words, "The dot generator 142." Following is meant to be interjected: "Amplifiers may be eliminated by special construction of the joy stick coupling to the potentiometers so as to produce a larger voltage swing directly from the potentiometers." And at the bottom, on the bottom line of the first paragraph the word "with" is crossed out, again, in red pencil. On page 48 in the line that starts with the word photocell I crossed out

the word "and," a-n-d, and injected "and hitting" so that the whole sentence reads: "By aiming, shooting at, and hitting the dot." On the next page, page 49, two-thirds of the way down the first paragraph the line that starts with the word "remain" I correct the handwritten word "their," t-h-e-i-r, to t-h-e-r-e, "there" in red pencil. Now, under claim 16 -- I can't read the page number. 58, it's 58. I correct the next to last sentence of the first paragraph by crossing out the word "dot" and substituting the word "bar."

145 Q. Was that a claim on that page?

A. Yes, the whole sentence read "Means for generating a 'net dot'" which I changed to read "Means for generating a 'net bar.'"

146 Q. That was claim 16?

A. The beginning of claim 16. Claim 17 on page 59, the last word was changed from "dot" to "bar" in red pencil. Page 61 on the second line the word f-o-r, for, "for generating" is crossed out in red pencil. Under claim 20 in the first sentence the X behind the word "screen" is crossed out.

147 Q. Was that earlier correction on that page in claim 19?

A. Yes, there were earlier corrections which reproduced

a Xerox on my copy.

MR. WELSH: He's referring to your correction.

THE WITNESS: We just went through that. That is the word f-o-r, for.

148 Q. (By Mr. Welsh.) Yes, I just asked if that was in claim 19.

A. Yes, that's right. It's half-way down in claim 19.

That appears to be all the corrections I made to this copy of the docket.

149 Q. Now, that draft contains the reference to television receivers, does it not?

A. Yes, it does.

150 Q. In fact, the second line refers to standard monochrome and color television receivers, is that correct?

A. Yes, that's correct.

151 Q. What did the term "standard television" -- strike that.

What did the word "television receiver" mean to you at the time you reviewed that application?

MR. WILLIAMS: If you recall, Mr. Baer.

THE WITNESS: Well, I don't recall precisely what the term meant to me at that time. How could I?

152 Q. (By Mr. Welsh.) Do you recall, generally?

A. We've been all over this territory before, too, Mr. Welsh. I believe I answered it before as I'm going to answer now that to me it means a display which uses Raster scan techniques in accordance with industry standards.

153 Q. Did the word standard television receiver mean anything different than television receiver to you?

MR. WILLIAMS: Again, if you recall.

THE WITNESS: Well, to the best of my recollection, it simply meant receiver of the type that would be found in general usage.

154 Q. (By Mr. Welsh.) Such as in the homes?

A. Such as in the homes, for example.

155 Q. And did such receivers include R.F. and I.F. sections?

A. Yes, home receivers would, certainly.

156 Q. Did all television receivers at that time include I.F. and R.F. sections?

MR. WILLIAMS: At what?

157 Q. (By Mr. Welsh.) At the time he examined this draft of the application.

MR. WILLIAMS: Again, Mr. Baer -- well, I guess I object to the question as lacking foundation. There's certainly no testimony in this record which will state that Mr. Baer had knowledge of all television receivers and what they consisted of.

THE WITNESS: Are you still waiting for an answer?

158 Q. (By Mr. Welsh.) Yes.

A. Sorry. I thought Mr. Williams took care of your question.

159 Q. Well, he may have tried to answer it for you, but he simply entered an objection. If you understand the question, would you please answer it?

MR. WILLIAMS: I object to the characterization of the objection as attempting to answer the question.

THE WITNESS: Sorry. Let me answer the question by saying that any television receiver meant for the reception of transmitted signals by television broadcast stations through the air or over the cable of necessity had to have R.F. and I.F.

sections.

160 Q. (By Mr. Welsh.) So television receivers, within your knowledge, at that time had I.F. and R.F. sections?

MR. WILLIAMS: I don't think that is what his testimony was, and I object to the question as a mischaracterization of the testimony.

THE WITNESS: You said those T.V. receivers which I have familiarity which required the reception of broadcast or cablecast signals in general required R.F. and I.F. front ends simply because the transmission was done by R.F. carrier?

161 Q. (By Mr. Welsh.) Were you familiar with any television receiver at that time that did not have the R.F. and I.F. sections?

A. I find it difficult to answer that, because we get hung up in the same line, again, of differentiating between a television receiver and a television monitor, and all through that before, Mr. Welsh, I said repeatedly that I don't see the difference between the two, and the difference between the two is strictly one that's a result of the application of the display, whether it's in an environment that requires R.F. transmission as an intermediate or where video gets shipped out

directly over a cable in which case you can dispense with the front end, meaning the R.F.'s and I.F.'s, but I don't see the difference.

162 Q. Did you see the difference at that time?

A. I couldn't have. I thought about what to me is generic definition. How could I have a different opinion on the subject.

163 Q. Did you question any of the language in that draft of the application other than those portions which you have corrected at the time that you made the corrections?

A. I don't recall questioning any of the language at that time.

164 Q. Did you have occasion to review the application for patent No. 3659285 prior to the time it was issued?

A. I think we've been through that, also. No specific recollection, but it is natural that almost invariably happens in the course of preparing an application. There's a certain amount of interchange between the attorney making it or preparing the draft and the inventors for the usual reasons. So I can only draw the conclusion that, yes, indeed, I must have had a number of prior occasions to review the beginnings of that draft.

165 Q. On those other occasions do you recall questioning the meaning of the language?

A. No, I do not.

166 Q. Subsequent to the issuance of patent 3659285 on April 25, 1972, did you have or have you had occasion to review the language of that application or patent?

A. Yes, indeed.

167 Q. And on any of those occasions did you question the meaning of the language in the patent?

A. I don't know whether I can say that I question the meaning, but, certainly, the possible interpretation and the limitations which the descriptors give it in the patents place on the whole concept of T.V. games I thought were getting protection.

MR. WELSH: Could you read that answer back, please?

(The last answer was read back by the reporter.)

168 Q. (By Mr. Welsh.) Did you recognize such interpretation and limitations independently, that is, by yourself?

A. I can't recall that, Mr. Welsh.

169 Q. Or did someone else call them to your attention?

A. I really cannot recall which came first.

- 170 Q. When did you first become aware of the limitations?
A. Again, I cannot pin a specific date on that situation.
- 171 Q. Can you pin a specific circumstance on that situation?
A. Yes. Not a specific circumstance but a series of circumstances, in particular, the appearance in public of coin-operated video games.
- 172 Q. When did you first become aware of such games?
A. I'd have to look into the records to refresh my memory. If I am not mistaken, it was sometime in '72.
- 173 Q. At that time did you examine the language of patent No. 3659285?
A. Sometime after having been made aware of the existence of video games I did examine the wordage in 285.
- 174 Q. Did you draw the conclusion that that wordage contained limitations by yourself?
A. I find it impossible to reconstruct just what happened, Mr. Welsh.
- 175 Q. Did you convey that thought to anyone else?
A. Well, just when discussions on that subject started between myself and the members of the patent department I can't pin-point. Certainly, there were ensuing discussions on the relationship between video games and our patents.

176 Q. Was it, then, in such suggestions that the interpretation of the language of the 285 patent having limitations came up?

A. Again, strictly going from memory, I felt that the references to a television receiver are extremely restrictive, not really reflective of the intent of the invention, and I was concerned from the beginning that the specific references in many places to television receivers, and only in a few places to Raster scan or display devices or some other words would cause difficulty in interpreting the applicability of our patents to video games.

177 Q. But didn't you when you first prepared your patent disclosure sheet, Exhibit 36-1, 2, and 3, contemplate only, as it states there, standard black and white or color T.V. sets?

MR. WILLIAMS: I object to the question.

MR. WELSH: I think the question is quite clear, Mr. Williams, and I'd like to have the witness answer it.

MR. WILLIAMS: Would you read the question back, please?

(The last question was read back by the reporter.)

MR. WILLIAMS: Well, if you are, by that question, attempting to characterize his previous testimony as to this document, then I object to the question as an improper characterization, but you may answer the question.

THE WITNESS: In all candor, from the very beginning there's no question playing television games on a commercial T.V. set was predominant in my mind because it made the most economic sense to attempt such an attempt to build such a piece of equipment.

178 Q. (By Mr. Welsh.) That's because there were so many available?

A. So many. I used the word ubiquitous when we had a discussion on that subject.

179 Q. Yes.

A. But I also distinctly remember, I think I said that before, that it wasn't very long afterwards that individuals like Rusch and Harrison and I talked about many other forms of T.V. gaming, in particular, very early in the game we talked about, with Solomon,,

we talked about the desirability of playing games in bars and places like bars, public places in which you could save money and prevent an F.C.C. radiation-type problem by eliminating the unnecessary R.F. oscillator modulator at the machine end, and the R.F. front end on the receiver end which are only necessary when you find yourself in a home environment when you cannot possibly reach into the television set, because you don't have control over the television set. It's an existing device sitting in somebody's home.

180 Q. Now, at the time application for patent 3659285 was filed, were you familiar with coin-operated amusement devices?

A. Well, in general I knew of their existence. There were such things as pinball machines and other coin-operated electromechanical devices, but I had no close familiarity with them.

181 Q. Did you state that prior to the time you had the thought of the T.V. games the first time you had not seen any coin-operated amusement devices?

A. Are you asking me whether I stated that once upon one time?

182 Q. Yes.

A. I'm sorry. I don't recollect exactly what I said except that you took issue with my statement that I had never seen a pinball machine before which I didn't say. I said I never paid any attention to them, which was a fact.

183 Q. Now, at the time the application for patent 3659285 was filed were you not still primarily interested in taking advantage of the availability of the ubiquitous number of T.V. sets in homes?

A. No question about that.

MR. WELSH: I'd like the reporter to mark this certified copy of the file wrapper of patent No. 3659285 as Exhibit 40.

(Whereupon, the document above-referred to was marked Sanders' Exhibit No. 40 for Identification.)

(Whereupon, at 2:15 o'clock, P. M., a short recess was taken.)

AFTER RECESS 2:45 P.M.

184 Q. (By Mr. Welsh.) Mr. Baer, I hand you Exhibit 40 which is a certified copy of a file wrapper on contents of

the 285 patent included, and I direct your attention to page 61 and ask if that is your signature appearing on that page?

A. Yes, it is.

185 Q. And that's your signature on the paper called on the power of an attorney and petition in the file?

A. Yes.

186 Q. And what date did you sign that?

A. August 18, 1969.

187 Q. Did you read that paper before you signed it?

A. Yes, sir.

188 Q. The paper states that you read the foregoing application, does it not?

A. I believe it does.

189 Q. And at the time you signed the paper or prior thereto had you read the foregoing application?

A. Yes, I had.

190 Q. As of that date, August 18, 1969, had you become aware of any coin-operated video games?

A. No, sir.

191 Q. I might have asked you this, but I hope you'll bear with me. Do you recall, roughly, when you first saw such coin-operated games?

A. You did ask it, and I said I wasn't exactly sure. Not only that, I didn't first see them, but I first heard about them from two sources. Someone mentioned their appearance in, I believe, a Navy PX on the West Coast, and then Bill Rusch either saw or someone pointed out to him that he or she had seen a machine, and Rusch wrote a memo, I believe, to Mr. Etlinger on the subject reporting on the appearance of coin-operated T.V. games, and I got a copy of that memo or was shown a copy of the memo.

192

Q. Do you know if that's here?

A. I think it's here somewhere. Don't ask me where. I haven't seen that since it was written, so who knows.

MR. WELSH: Off the record.

(Discussion off the record.)

MR. WELSH: Could we mark this?

MR. SELIGMAN: Sure, yes.

MR. WELSH: I now ask the reporter to mark this memo as Exhibit 41.

(Whereupon the document above-referred to was marked Sanders' Exhibit No. 41 for Identification.)

193

Q. (By Mr. Welsh.) I hand you Exhibit 41 and ask if you would, please, identify it.

(Document handed to the witness by
Mr. Welsh.)

THE WITNESS: Exhibit 41 is a copy
of a memo from Rusch to Lou Etlinger dated 9 July,
'73, in which he reports that his son has seen coin-
operated T.V. games in various locations at the near-by
beaches.

194 Q. (By Mr. Welsh.) That is near to here?

A. Near to New Hampshire or New Hampshire or near-by
Massachusetts.

195 Q. And is that a copy of the memo about which you were
speaking that was one of the ways you first became
aware of coin-operated T.V. games?

A. Yes, it is.

196 Q. Do you know when in relation to this date of July 9,
1973, you received a report of coin-operated games
at a Navy installation?

A. Either a month or two before or after this memo
was written.

197 Q. But within a month or two?

A. Sometime, probably, in the summer of '73.

MR. WELSH: I'd like the reporter,
now, to mark as Exhibit 42 a certified copy of the

file wrapper and contents of the application resulting in reissue patent No. 28598.

(Whereupon, the document above-referred to was marked Sanders' Exhibit No. 42 for Identification.)

198 Q. (By Mr. Welsh.) I now hand you Exhibit 42 and direct your attention to a five-page document entitled declaration, power of attorney, and assent of assignee and, more specifically, to page 4 of that document. I ask is that your signature appearing on that page?

A. Yes, that's my signature.

199 Q. And when did you place your signature there?

A. April 23, 1974.

200 Q. Did you compose that document?

A. No, sir.

201 Q. Do you know who did compose it?

A. Not specifically. Personnel in the patent department, I guess.

202 Q. Who presented the document to you for signature?

A. I don't remember that, specifically, either. Probably either Mr. Etlinger or Mr. Seligman.

202a Q. There are other signatures on that same page, are there not?

- A. Yes, sir, Bill Rusch's and Mr. Harrison's.
- 203 Q. And did they sign on the same day?
- A. No, on the following day, the 24th of April, '74.
- 204 Q. Were they present when you signed them?
- A. I don't remember. I don't believe so.
- 205 Q. Did you read the paper before you signed it?
- A. Yes, I did.
- 206 Q. Do you have a specific recollection of that?
- A. No, no more than I have a specific recollection of having read any letter I get in the mail.
- 207 Q. This document is longer than the usual declaration or such as the one that you signed in Exhibit 40, is it not? That's right there. It's open to that page.
- A. Yes.
- 208 Q. Do you believe you read the document because it was your custom to read such documents?
- A. Yes. More than that, we are required to sign the document, and I don't sign a document I don't read.
- 209 Q. In its entirety?
- A. Entirety, certainly.
- 210 Q. Did you understand the document when you read it?
- A. I believe at the time I did.
- 211 Q. The document states, and it is placed in the first

person plural, in part: "We have read the foregoing specifications and claims." Now, the foregoing specifications and claims are, if you refer to what's ahead of the document, are cut out portions of the patent, the original patent, are they not?

A. Yes.

212 Q. Did you actually read those when you signed the document?

A. I know that I read them all repeatedly over the course of the week preceding the signature of the document. It certainly was fresh in my mind at the moment I signed the document.

213 Q. You say you read them repeatedly in the weeks before you signed the document?

A. Well, if not in this specific format, certainly in the docket form which we looked at this morning.

214 Q. Now, what we looked at this morning was the draft of the application for the original 285 patent. Did you understand that?

A. Yes, I guess I am in error.

215 Q. Did you read in addition to the specification which is a cut-out portion of the full printed patent, did you read the claims that were a part of the foregoing specification and claims?

A. Do I understand your question to mean that you want me to read all the claims?

216 Q. No, did you at the time you signed?

A. I'm sorry. I misunderstood you. I thought you asked me whether or not I could read all the claims. Yes, I did.

217 Q. I would like to ask you, now, to read the declaration.

MR. WILLIAMS: You mean read the declaration into the record or read it to himself?

MR. WELSH: No, read it to himself.

THE WITNESS: Here it is.

218 Q. (By Mr. Welsh.) Do you still subscribe to all of the statements in the declaration as they are written?

A. Yes, I do.

219 Q. Is there any statement with which you have any difficulty subscribing to?

MR. WILLIAMS: Mr. Baer, I suggest that if you have any doubt at all that you take your time and read it very thoroughly.

THE WITNESS: Well, I thought I read it very carefully, and the answer is no, I don't have any problem with identifying or agreeing with any

of the statements made in the declaration at the present time.

220 Q. (By Mr. Welsh.) At the time you signed the declaration did you actually have the beliefs stated therein yourself, or did you subscribe to the statements because they had been prepared by the legal department?

A. No, I am certain the former was the case.

221 Q. I refer now, specifically, to the following portion on page 2 in the center: "-- that in the context of my invention and in the context of the description thereof in Sanders' patent 3659285 I have always understood and believed 'television receiver' and 'standard television receiver' to mean any cathode ray tube display incorporating circuitry for a Raster-type scan." Did you believe that the terms television receiver and standard television receiver at the time that 285 application was filed meant any cathode ray tube display incorporating circuitry for Raster-type scan even though it did not have the I.F. or R.F. sections active?

A. Yes.

222 Q. And you did not acquire that understanding only after you became familiar with coin-operated T.V. games?

A. No, sir.

223

Q. Referring to the fifth line from the bottom of page 2 of the declaration and the part that reads: "While I believe the enumerated claims 1 and 2, 5 and 6 do, in fact, cover games using television monitors or broadcast receivers with the radio and intermediate frequency portions by-passed or disabled --" Did you actually believe that those claims did, in fact, cover such games?

A. Yes.

224

Q. On what did you base your belief?

A. On the fact that we had previously, and I think I testified to that a number of occasions, frequently discussed the direct application of the video and positive video output of the T.V. game to the video sections of a Raster scan device. That repeatedly bemoaned the fact that T.V. manufacturers were too cheap, if you will allow me a colloquialism, to put what we characterized as the phonograph jack into standard television receivers which at very low expense to them would have made it possible to enter the video and sync circuits of a television receiver directly instead of via the circulous route of an R.F.

oscillator modulation, R.F. front, I.F., and detector.

225 Q. Did you base that belief that the enumerated claims 1, 2, 5 and 6 covered the games using T.V. monitors or broadcast receivers with the radio and intermediate frequency portions by-passed, then, as a result of discussions with other people?

A. I believe I already testified that we -- by we, I mean Harrison, Rusch -- had discussions on the subject. That's my recollection many years ago. If that's what you mean by discussion with others, the answer is yes.

226 Q. In those discussions did you actually read the claims together?

A. Those discussions occurred years before any patent was issued.

227 Q. Well, I ask you the basis for the belief that claims 1, 2, 5 and 6 covered T.V. games, and you referred to your earlier discussion?

A. That's right. The claims, I believe, were the claims you enumerated here, are valid, because we had discussions years before pointing to the fact that there are other ways of entering T.V. sets than via the antenna terminals. Unfortunately, it wasn't practical to do so in a home environment.

228

Q. Referring, now, to the middle of page 3, it contains the statement: "That the inclusion of terms within claims of Sanders patent No. 3659285 such as claims 1 and 6 which might form a basis for any party to take the position that those claims do not include television games as a video display device --" I'm sorry -- "television games using as a video display device either a television monitor or television receiver intended to receive broadcast television signals but with the radio frequency and intermediate frequency portions thereof by-passed or disabled was their error and without any deceptive intention" Whose error does that refer to?

A. I think error on the part of all of us who were in one way or another contributed to the disclosures, the writing of the applications, to the corrections of the applications for the various inventions.

229

Q. You referred yesterday to demonstrations made to RCA and others starting in January of 1969, and specifically that you in those demonstrations used the apparatus of Exhibit 35. How long did those demonstrations go on?

A. Do you mean each individual demonstration or for how

many months?

230 Q. Well, the period of demonstrating.

A. Well, in most cases -- I am still not sure how to answer your question correctly. In most cases the demonstration lasted for about two or three hours with interruptions or repetition of facets of the demonstration, in particular, participation by most of the members of the visiting -- visitors' groups taking turns playing games.

231 Q. Did any of the visitors for whom the demonstrations were given show any interest in going forward with T.V. games?

A. To the best of my recollection, just about everybody, not just at the RCA meeting but at subsequent meetings, who saw and participated in the demonstrations appeared favorably impressed if not enthusiastic.

232 Q. What was the purpose of the demonstrations?

A. To determine interest on the part of the companies or visitors represented in taking a license to patent or patents for the purpose of producing T.V. games. I don't even know whether the patents were issued for the coming patent disclosures.

233 Q. It was contemplated that Sanders would grant a license

to one of those visitors for manufacturing T.V. games under your patent rights?

A. That's right.

234 Q. Did any of the persons to whom you demonstrated Exhibit 35 ever take a license?

A. Yes, Magnavox.

235 Q. Did any of the others ever take a license?

A. No, they did not.

236 Q. Did any of the others enter into negotiations with Sanders for a license?

A. Yes, they did, RCA, specifically.

237 Q. Any of the others?

A. I don't believe so.

238 Q. To what other companies were demonstrations made?

A. To General Electric, to representatives of Sylvania, to Warwick Electronics, to Zenith. I don't have the folder which you have in front of you available to refresh my memory.

(Document handed to the witness by Mr. Welsh.)

THE WITNESS: Yes, to Motorola, and I believe I've covered them all.

239 Q. (By Mr. Welsh.) When did those demonstrations take

place?

A. Again, with reference to Exhibit 21, they began in January of '69 and lasted or recurred at various times during '69 and into July of 1970.

240 Q. What happened with respect to the RCA negotiations?

A. To the best of my recollection, an agreement was written and somehow never reached the signature stage.

241 Q. Do you know why?

A. I can only recollect in general that there was some disagreement on specific terms.

242 Q. When did the first demonstrations to Magnavox take place?

A. To Magnavox, well, indirectly, a demonstration took place to William Enders of RCA during that first RCA visit, and he took this knowledge of this demonstration with him to Magnavox, and he caused a repeat performance at Magnavox whose date I can't learn by looking at the cover of Exhibit 21, and I don't know whether it is anywhere in the body of Exhibit 21. I don't recall from memory.

243 Q. But Mr. Enders attended the first RCA demonstration?

A. That's right, as a member of the RCA team.

244 Q. Did he later, then, become employed by Magnavox?

A. Yes, he did.

245

Q. Did you find in Exhibit 21 anything which would indicate when the Magnavox demonstration first took place?

A. Not precisely. The one reference here is 21-121 in which in my handwriting I note Bill Enders' phone number, address, etc., at Magnavox in New York and the request to have proprietary agreements sent to him, I assume, or to Magnavox, and the reference to an intention of visiting 7 or 17 July, '70 I don't understand. It says '71 here. And a notation that he was with RCA up to three months ago, so he'd be, if you will, employed by Magnavox.

(Whereupon, at 3:40 o'clock, P. M.,
a short recess was taken.)

AFTER RECESS 3:50 P.M.

246

Q. (By Mr. Welsh.) During our recess, Mr. Baer, were you able to find any documents which indicate the circumstances and time when there was first contact with Magnavox?

A. Subsequent to the telephone conversation which we

referred to in connection with 21-121, there was a letter written by Mr. Etlinger to Mr. Enders on July 1, 1970, in which he invited Mr. Enders to come and look at a demonstration of T.V. games on July the 17th at 9:00 A.M.

247 Q. That's 1970?

A. 1970, yes. Though I don't specifically remember Mr. Enders coming in, I suppose he was, and that subsequent to his visit here we, Lou Etlinger and I, made a visit to Fort Wayne where we demonstrated the equipment to a number of Magnavox personnel there.

248 Q. And when did that trip occur?

A. With reference to some weekly expense reports, one which pertains to myself and another which pertains to Lou Etlinger, we appear to have been there on August 26 and 27, 1970.

249 Q. Do you remember that trip?

A. Yes, I do.

250 Q. Did you take apparatus to Magnavox to demonstrate T.V. games to them?

A. Yes, we did.

251 Q. What apparatus did you take?

A. Exhibit 35, Exhibit 35A, associated overlays and,

also, the golf putting attachment which we were unable to find. Oh, excuse me. And Exhibit -- I'm sorry. Off the record.

(Discussion off the record.)

THE WITNESS: Exhibit 31.

252 Q. (By Mr. Welsh.) Was the demonstration there similar to the one you described with respect to RCA?

A. Essentially identical.

253 Q. Do you recall who was present at the demonstration other than you and Mr. Etlinger?

A. I recall the names of several people. It was a fairly large group. I can't recall everyone. Mr. Jerry Martin who was then vice president of the group that was eventually to be concerned with T.V. games was present. Mr. Wiles was present. He was an assistant to Mr. Martin. I believe Mr. Sanders was there. I think he was a chief engineer of either the company or some division of the company. Several senior engineering people whose names I don't recall.

254 Q. Did anything happen as a result of that meeting?

A. Well, yes. Not too long thereafter Magnavox expressed a desire to go forward with a marketing, exploratory market evaluation program.

255 Q. And what was done in that regard?

A. I believe agreement was reached between Sanders and Magnavox permitting them to construct, design and construct a certain number of prototype units which were to be used for that market survey.

256 Q. That was to be constructed by Magnavox?

A. By Magnavox.

257 Q. Is that agreement here?

A. I believe so.

(Discussion off the record.)

THE WITNESS: The first agreement allowed Magnavox to construct whatever it was, ten or fifteen, market survey research units.

MR. WELSH: I'd like to ask the reporter to mark this as Exhibit 43.

(Whereupon, the document above-referred to was marked Sanders' Exhibit No. 43 for Identification.)

258 Q. (By Mr. Welsh.) I hand you Exhibit 43 and ask if you could identify that, please?

(Document handed to the witness by Mr. Welsh.)

THE WITNESS: Exhibit 43 appears to be the document to which I made reference, namely,

agreement between Magnavox and Sanders which permits, permitted Magnavox to move forward in the T.V. game area, but I would have to read the text on whether it really represents agreement to allow them to make apparatus. Yes, here it is. Section 3, Magnavox shall have the right to make up to twenty units. That's what I had recollected earlier.

259 Q. (By Mr. Welsh.) Now, the date of that agreement is March 3, 1971?

A. That's correct, sir.

260 Q. And the date of your visit with Mr. Etlinger was in August of 1970?

A. '70. August 26 and 27.

261 Q. Did anything happen with respect to your dealings with Magnavox in the meantime.

MR. WILLIAMS: You mean Mr. Baer's dealings with Magnavox?

262 Q. (By Mr. Welsh.) No, Sanders.

A. I don't know whether anything happened in the interim. Certainly, there must have been discussions. We concluded agreements.

263 Q. Did you not participate in discussions?

A. If I did, I do not specifically recollect.

- 264 Q. Do you recall whether Sanders undertook to do anything in connection with design or construction of the prototype?
- A. Oh, no, we had no bench or labor construction activity of any kind that year or the following year that I can remember.
- 265 Q. Do I understand correctly, then, that nothing was done in the further design of the T.V. games devices here from January of '69 when the RCA demonstration was first given?
- A. I'm not sure of that, but I believe that's true, because, to the best of my knowledge, Exhibit 35 represents the end of the line of the hardware we built, at least in preparation for demonstrations to potential licensees, in 1969 and '70.
- 266 Q. Did Sanders furnish anything to Magnavox to assist Magnavox in the construction of the prototypes?
- A. Yes, we lent them the breadboard unit which we had labeled Exhibit 35, I think, under the terms of this agreement, Exhibit 43. We gave them a certain period of time during which they could use it for reference purposes in conjunction with some schematics that describe Exhibit 35 so that they could redesign it and

build their own units for use in the field.

267 Q. Did you furnish drawings, then, to Magnavox?

A. Yes, we did. Well, informal drawings were furnished, those drawings which describe what's in Exhibit 35.

268 Q. Are copies of those drawings here?

A. Yes, I believe the folder you have in your hand represents that collection of drawings that was sent to Magnavox.

269 Q. That's been marked as Exhibit 20.

(Document handed to the witness by Mr. Welsh.)

THE WITNESS: That's correct.

270 Q. (By Mr. Welsh.) And these drawings -- were these specific drawings or are these copies of drawings that were sent to Magnavox?

A. It appears that we have all the originals here. We ran off blueprints or copies which we sent to Magnavox, blueprint or Bruning.

271 Q. Those drawings have already been given identifying numbers, have they not?

A. Yes, they have.

272 Q. Could you go through them one by one and identify them, please?

A. The first one is 20-1, which is a listing at a T.V. gave device. It refers to seven different figures. Oh, I see. The drawings were entitled figure 1, 2, 3, etc. This list lists figure 1, block diagram; figure 2, a schematic, and so on and so forth.

273 Q. And are those drawings actually there?

A. Mr. Welsh, there are quite a few more figures, physically, in this folder than this abbreviated list on 20-1 shows.

274 Q. Could you go through them and identify them, please?

A. Yes, I can. I think they're not quite in order. 20-2 is figure 1, which is a block diagram of essentially what's in Exhibit 35, Figure 2 is a detailed schematic which we had already looked at under some other exhibit number a couple of days ago.

275 Q. What date does 20-2 bear? That's 20-3, I believe.

A. Oh, I'm sorry. 20-2 has Harrison's signature on it with a date 3/24/71 next to it.

276 Q. And 20-3, 20-3, as far as I can tell, has no date. I might say that -- maybe I'll save time -- this whole package was made up by Harrison for the purpose of having Magnavox engineers look at relatively clean-looking drawings instead of some of the tired and

tattered schematics we had, so that I assume that the dates should all be within a day or two of 3/24/71.

277 Q. Now, Exhibit 20-1, which is the list of drawings, has a date, does it not?

A. Yes, 3/24/71.

278 Q. And does it refer to Exhibit 20-3?

A. Yes, it does. It calls for schematics and parts list of block breakdown 8. I think that means 3A through 3N, schematics and parts list of breakdown of block diagram of figure 1.

279 Q. May I direct your attention to the fact that Exhibit 20-3 contains the reference "fig," f-i-g, 2, is that correct?

A. 20-3, yes, that's right.

280 Q. Then is Exhibit 20-3 the document identified as figure 2 on 20-1?

A. Yes, test system schematic.

I understand this now. Do you want me to go on?

281 Q. Yes, please.

A. Evidently, there is not one figure 3. There's figure 3A through N, all of which are schematics and parts list pertaining to what he calls a block breakdown of

figure 1 and the schematic of figure 2, and, indeed, 3A is a schematic of the horizontal and vertical sync oscillator and so on and so forth. Do you want me to go through every last one of them?

282

Q. Yes.

A. All right. Figure 20-4 shows two schematics and is labeled "Horizontal and vertical sync multivibrators," and is dated 3/24/71.

20-5 is figure 3-B identified as a "Spot generator," and it shows the schematic of a spot generator.

20-6 is identified as figure 3-D and labeled "Primary flip flop," also done on the 24th of March, '71.

Figure 3-E is labeled "Secondary flip flop." It is Exhibit 20-7 and shows a schematic of the secondary flip flop or wall flip flop.

Figure 3-F is Exhibit 20-8. It is labeled "Crowbar reset and pump switch" and shows schematics of that part of the circuitry.

Figure 3-G is Exhibit 20-9 labeled "Gate matrix." It shows the diodes and resistors of that part of the gate matrix in Exhibit 35. No date

on this drawing.

Figure 3-H is Exhibit 20-10 and labeled "Rifle, electronics and golf putting joy stick" and shows two schematics, one for the rifle electronics, one for the golf putting joy stick, same date, the 24th.

Figure 3-J is a schematic of a chromagenerator, Exhibit No. 20-11, same date.

Figure 3-K is Exhibit 20-12 and shows two schematics and is labeled "Joy stick amps and rifle 1 shot." It shows a corresponding schematic.

Figure 3-L is a schematic of a code generator labeled as such. It is Exhibit 20-13.

Figure 3 -- Exhibit 20-14 has no figure number and is labeled "TV gaming device decoder." It is a schematic for Exhibit 31.

Figure -- it looks like figure 3-N1 and is a layout drawing, a sketch, actually, of the physical location of circuits as they appear when you look into the top of Exhibit 35.

283

Q. And what's the number of that document?

A. I'm sorry. That's 20-15.

20-16 is a similar view into the

bottom of Exhibit 35 showing the location of sub-assemblies, if you will, on what we call the bottom of Exhibit 35. I don't know whether I said it, but that was Exhibit 20-16.

20-17 is figure 4-A of that initial listing on 20-1. It consists of a series of wave forms found at various places in the equipment.

20-18 continues that depicting of wave forms and is called figure 4-B. Then there's a figure 4-C, Exhibit No. 20-19, that continues to show various wave forms.

Then we go to Exhibit 20-20 which is figure 5 that lists the game sequence which we used in the demonstration to Magnavox, which is identical to the one we looked at yesterday in connection with box 35, Exhibit 35.

284 Q. That was the demonstration for RCA?

A. RCA and all the others.

285 Q. Figure 20-21 -- I mean, Exhibit 20-21, I'm sorry, is figure 6 in the listing and is so designated and is called a T.V. gaming device block diagram. Game -- I believe that says vrs. circuitry, and I don't know what that means. It looks like v-r-s.

286 Q. Was there not another gaming block diagram?

A. Yes, there was. I think figure 1, which is Exhibit 20-2, is a block diagram in the sense that it shows schematic detail of interconnections between the various blocks in a system including some of the switch's functions. That's 20-2. On the other hand, 20-21 is what I call a flow diagram that shows what signals go from which block to what block, and I consider it as a simplified version of figure 1 of 20-2.

287 Q. Does 20-21 still represent the apparatus of Exhibit 35?

A. Oh, yes.

288 Q. Was there any written description that accompanied these diagrams other than the listing, such as Exhibit 20-1?

A. I don't remember, Mr. Welsh, and -- off the record.

(Discussion off the record.)

THE WITNESS: Unless there is something contained in here that will refresh my memory, I don't remember turning out a functional description, and it doesn't appear to be here.

289 Q. (By Mr. Welsh.) Would you go on, then?

A. All right. The next exhibit is 20-22 through 23 are

two pages of electrical parts lists. That relates to specific circuits. In this case, the sync multi-vibrator and spot generator is specifically as shown in the upper left-hand corner on 20-22 and 20-23.

20-24 is a schematic, again, figure 3-C. Now, see what I meant by my earlier remark that the pages are out of sequence? Because we've gone past 3 to 4 and 5, and here we're back to figure 3 showing a summing amplifier and modulator and R.F. oscillator.

20-25 and 20-26, 27, 28, 29, 30, 31, 32, 33, 34, 35 are all parts lists, all identified as to which section of the breadboard system Exhibit 35 they pertain to.

20-36 is a schematic, a print this time, of the T.V. gaming device decoder which I thought we had already seen in the original before.

290 Q. Is that a copy of the one which was marked earlier?

A. Yes, it is. It is a print of Exhibit 20-14, so it is redundant.

20-37 seems to be a print of the sequence of games that were played, and I think we're getting to a whole lot of reproduction, now, of the originals which we have just gone through in

reduced format, that is, reduced to an 8-1/2 x 11 size from whatever sizes they might have been before.

291 Q. That goes from what number to what number?

A. That is 20-38 through 20-63.

20-64 is a reprint of an article written by George Kent of Magnavox on large screen solid state T.V. with quality performance, and that goes on through 20-69, and I have no idea why it is in this folder.

20-70 is a repetition of a printed, Xerox copy, rather, of 20-1, so it is redundant.

20-71, 72, 73 and on through 102 appear to be Xerox copies of the original schematics and parts list and wave forms that we looked at earlier.

292 Q. Could you just take a moment and check that to be sure, because it doesn't include some newer material.

A. O. K. Do you want me to call them out as I look at them or just --

293 Q. No, I don't think that will be --

A. All right.

294 Q. This group in particular, 20-73 and on. The reason I ask that is there seem to be quite a large number of parts lists, whereas there were only a couple of

parts lists in the numbers that you referred to previously.

A. There were quite a few, except we counted them two pages at a time interspersed with schematics, and here they are all bound together.

MR. WILLIAMS: Mr. Baer, take your time.

THE WITNESS: All right. If you like, but it's just having gone through them all, I can't tell at a glance whether they're in there or not. The only thing we have to double-check is whether the number of parts list correspond to the number, and that, of course, I can tell by inspection. There are 13 Xerox copied pages of parts lists here, so --

295 Q. (By Mr. Welsh.) There appear to be roughly that, a corresponding number. Does that complete --

A. No, it doesn't. There are other documents starting with 20-103 in this folder. 20-103 and 104 are reproductions of a contact report which I wrote and has my signature reporting on my visit along with Bill Harrison --

296 Q. On what date?

A. -- to Fort Wayne on the 30th of March, 1971. 20-105,

which is attached to this contact report, is a, roughly, hierarchy of schematic, showing who is who in the Magnavox corporate hierarchy who we met there at Magnavox or heard about in connection with T.V. games. Do you want me to go on?

297 Q. Yes, please.

A. The next document is 20-166 which appears to be another print of the schematic, Exhibit 35, which it appears to be -- that is, it's a Bruning copy of Exhibit 20-3. Finally, there's a blueprint copy of, again, of figure 2 with some red ink markings on it and pencil markings.

298 Q. Do you know who put the markings on?

A. No, I don't.

299 Q. Do they mean anything to you?

A. No, they confuse me, if anything.

300 Q. You said Mr. Harrison prepared this packet?

A. Yes. It's entirely possible that this is irrelevant to the package.

301 Q. By that you mean it may not have --

A. Been delivered.

302 Q. -- been a copy of something delivered to Magnavox?

A. That's right. It might have been a schematic that was

marked up later for some other purpose. I don't recall.

303 Q. Now, referring to your March 30, 1971, trip on the subject of your document, 20-103, 104 and 105, do you recall that trip?

A. Yes, sir.

304 Q. What was the purpose of the trip?

A. To help Magnavox engineers to become acquainted with the detail functions of Exhibit 35 in anticipation of their effort to redesign and generate some new demonstration equipment for use in the field in accordance with the agreement that we had.

305 Q. How long were you there?

A. I believe for two days. By just scanning that, it looks like I was there for a day.

306 Q. Did Magnavox actually construct prototypes in accordance with the agreement?

A. Yes, I believe so.

307 Q. Did you ever examine any of those prototypes?

A. No, I never did get to see any of them.

308 Q. Do you know whether Magnavox made any changes in the circuitry which is shown in these diagrams that you've just been identifying?

A. You mean to those prototypes, in those prototypes?
I do not know.

309 Q. Did they consult with Sanders after the March 30th
trip of you and Mr. Harrison to Fort Wayne?

A. I don't exactly recall whether there was an additional
trip. I don't think so. They were very independent.

310 Q. You say they were very independent?

A. They were very independent.

311 Q. Now, we did refer in Exhibits 32A through 32E to a
further contact with Magnavox in which your
consulting services were offered to them and, if
I recall correctly, that nothing ever came of that
negotiation?

A. Also, this was much later. This was long after
Odyssey, which was the trade name they applied to
their first commercial product that had become
commercially available, or at least shortly after or
sometime after Odyssey became available and not
during the breadboard demonstration period.

312 Q. Do you recall any other thing that you did with or
for Magnavox prior to the introduction of Odyssey?

A. No, to the best of my recollection, there was very
little, if any, contact between us during the period

of time between our delivery of the data package we just went through and the time they first showed hardware to the public and the press at large.

313 Q. That was after they were in production?

A. Well, I would say that was when they were preparing for production, I believe, in March of '72.

314 Q. It was after they had decided to go into production?

A. Yes, also after they had written the new agreement with us.

315 Q. Is this agreement dated January 27, 1972?

A. That's right.

MR. WELSH: Mr. Seligman, could we mark this as an exhibit? This is similar to the other one.

MR. SELIGMAN: Yes, no problem.

(Discussion off the record.)

MR. WELSH: Well, may we say this: if there's any problem, may we make Xerox copies of these and substitute them for the exhibits?

MR. SELIGMAN: I'm sure there's no problem, because this agreement has got markings on it and, also, there appear notations that it wasn't initialed by Mr. Rosell, so I'm sure this is

not the original copy, so --

(Discussion off the record.)

316 Q. (By Mr. Welsh.) Have you had occasion to examine the circuitry of any of the commercial Odyssey games of Magnavox?

A. Yes, I've had a schematic for the first Odyssey unit within a few months after it appeared on the market.

317 Q. Did you compare that circuitry with your own circuitry as represented by Exhibit 35 of the documents in Exhibit 20?

A. Yes, at one time or another.

318 Q. Did you find them to be the same or different?

A. No, they're different in quite a number of respects.

319 Q. Were they different in minor specs or major respects?

MR. WILLIAMS: I object to the question as to what a minor **respect** or **major respect** is.

THE WITNESS: I'd say there are many circuit changes to improve performance. I assume you want examples?

320 Q. (By Mr. Welsh.) I was just interested in the nature of the changes.

A. Of course, the interconnections in the machine, the method in which it is programmed are completely

different than the original Magnavox idea. The business of using plug-in cards to do the pre-programming in the detail design is all brand new.

321 Q. Did not some of your forms contemplate plug-in cards?

A. We might have talked about it, but they went ahead and did it, which is quite a bit different. Of course, I don't know what the cause or reason for all of the changes were, but some of them had to do with poor synchronization of some of the sets when used with the original breadboard, and they cleaned that up. A great deal of effort was expended on the R.F. section to meet FCC requirements and so on.

322 Q. Do you happen to remember any other?

A. No, the only thing that comes to mind is some changes they made to the circuitry in the rifle.

323 Q. Was the manner of play of the first commercial Odyssey game the same or different than the manner of play of your model, Exhibit 35?

A. Many of the games were either identical or similar, and some were brand new. Certainly, all the software that accompanied the games was brand new. All the basic games were essentially as they had been before, ping pong, tennis, handball, volleyball all appeared

either in the basic unit or in the options which
Magnavox offered with the first unit.

MR. WELSH: Let's break. How
about 9:30 in the morning?

MR. WILLIAMS: I have a slight
problem.

MR. WELSH: 10:00?

MR. WILLIAMS: O. K.

Ralph H. Baer
Deponent

THE STATE OF New Hampshire
COUNTY OF Hillsborough) SS.

Subscribed and sworn to before me this 10th
day of May, 19 76.

Walter E. Trepanier
~~Justice of the Peace and/or~~
Notary Public